

EN8402 IIA2

ENVIRONMENTAL PROTECTION AGENCY

California State Motor Vehicle Pollution Control Standards;
Amendments Within the Scope of Previous Waivers of Federal
Preemption; Determination of the Administrator

I. Introduction

Section 209(a) of the Clean Air Act, as amended ("Act"), 42

U.S.C. §7543(a), provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of Section 209(a) for any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. The Administrator must grant a waiver unless he finds that: (A) the determination of the State is arbitrary and capricious; (B) the State does not need the State standards to meet compelling and extraordinary conditions; or (C) the State standards and accompanying enforcement procedures are not consistent with Section 202(a) of the Act.

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As previous waiver of Federal preemption decisions have explained, State standards or enforcement procedures are not consistent with Section 202(a) if there is inadequate lead-time to permit the development of the technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and State test procedures impose inconsistent certification requirements.^{1/} California is the only State which meets the Section 209(b)(1) eligibility criteria for receiving waivers.

Once California has received a waiver of Federal preemption for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving a further waiver of Federal preemption.^{2/} If California acts to amend a previously waived accompanying enforcement procedure, the change may be included within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's

1/ See, e.g., 43 FR 32182 (July 25, 1978).

2/ See 43 FR 36679, 36680 (August 18, 1978).

requirements with Section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.^{3/}

II. Discussion

In a November 10, 1983 letter, ^{4/} the California Air Resources Board ("CARB") notified EPA that on March 16, 1983, it had adopted regulations and incorporated procedures establishing emissions-related defects reporting, in-use vehicle recall and in-use vehicle enforcement testing requirements.^{5/} These regulations apply to 1978 and subsequent model-year passenger cars, light-duty trucks, medium- and heavy-duty vehicles and motorcycles. CARB stated that these regulations are patterned after EPA's recall and defect reporting regulations found at

^{3/} See 44 FR 61096, 61099-61101 (1979); see also, letter from Marvin B. Durning, Assistant Administrator for Enforcement, EPA to Thomas C. Austin, Executive Officer, California Air Resources Board (CARB), March 8, 1979.

^{4/} Letter from James D. Boyd, Executive Officer, CARB, to William D. Ruckelshaus, Administrator, EPA, dated November 10, 1983 (hereinafter "CARB Letter of Request").

^{5/} 13 Cal. Adm. Code §§ 2100.6, 2109, 2111, 2112 and 2113, which include by incorporation the California In-Use Vehicle Emission-Related Defect Reporting Procedures for 1978 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, Medium-and Heavy-Duty Vehicles, and Motorcycles, adopted March 16, 1983, with Appendix A; and the California In-Use Vehicle Emissions-Related Recall Procedures and In-Use Enforcement Test Procedures for 1978 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, Medium-and Heavy-Duty Vehicles, and Motorcycles, adopted March 16, 1983.

40 C.F.R. Part 85, Subparts S and T. CARB requested a determination by EPA that these regulations fall within the scope of previous waivers of Federal preemption 6/ since the new regulations and amendments clearly do not undermine California's prior determination that the State's standards are, in the aggregate, at least as protective of the public health and welfare as the Federal standards; do not cause California's requirements to be inconsistent with Section 202(a) of the Clean Air Act; and do not raise any new issues affecting previous waiver determinations.

I agree with CARB's judgment that these regulations and incorporated procedures are included within the scope of previous waivers because they present no new issues affecting previous determinations with regard to California's standards and enforcement procedures; do not undermine California's "protectiveness in the aggregate" determination; and do not affect the consistency of California's requirements with Section 202(a) of the Act.7/

6/ E.g., 42 FR 31637 (June 22, 1977); 43 FR 999 (January 5, 1978); 43 FR 1829 (January 12, 1978); 43 FR 9344 (March 7, 1978); 43 FR 15490 (April 13, 1978); 44 FR 25729 (June 14, 1978); 45 FR 54126 (August 14, 1980); and 47 FR 1015 (January 8, 1982).

7/ Since California's defect reporting and recall regulations are attempts to enforce standards relating to new motor vehicles which would otherwise be preempted by Section 209(a) of the Act, I find that this determination is necessary in order that California might enforce these regulations. Some manufacturers have previously argued that regulations pertaining to the in-use operation of motor vehicles are not aimed at controlling emissions from new motor vehicles and, therefore, are not subject to waiver by EPA. Motor and Equipment Manufacturers Association, Inc. (MEMA) v. EPA, 627 F.2d 1095, 1106-1107 (D.C. Cir. 1979), cert. denied, General Motors Corp. v. Costle, 446 U.S. 952 (1980). However, the Court in MEMA made clear that this was not so, but if it were, "then California need not even seek a waiver because subsection (d) [of section 209] preserves the field of regulations of old motor vehicles to state control ab initio." Id. at 1107 n. 19.

The amendments to the enforcement procedures are as follows:

1. Defect Reporting

On March 16, 1983, CARB adopted Title 13, California Administrative Code (CAC) Section 2111, which became effective on May 18, 1983, and which provides that all 1978 and subsequent model-year vehicles shall be subject to in-use vehicle emissions-related defect reporting procedures which are contained in a separate document which is incorporated by reference in the regulation. These defect reporting procedures are modeled after the Federal defect reporting regulations found in 40 C.F.R. Part 85, Subpart T. Like the Federal regulations, the California regulatory procedures require the manufacturer to file a defect information report when the manufacturer determines that a specific emissions-related defect exists in 25 or more in-use vehicles of the same model year, and detail what information the report shall contain. Similarly, these procedures also provide requirements for voluntary recall reports.

These regulations merely specify reporting requirements for manufacturers and, hence, these regulations clearly do not undermine the State's determination that its standards are, in the aggregate, as protective of public health and welfare as comparable Federal standards; do not affect the technological feasibility of the State's requirements, even considering cost of compliance; and raise no new issues affecting previous waiver determinations.

Therefore, these defect regulations are included within the scope of previous waivers of Federal preemption granted to California.

2. Recall

CARB adopted Title 13 CAC, Sections 2112 and 2113, on March 16, 1983, which provide that all 1978 and subsequent model-year vehicles shall be subject to in-use vehicle enforcement test procedures and recall. Specific procedures for testing and recall detailed in a separate document are incorporated in the regulation by reference.

The enforcement testing procedures provide for the selection of vehicles to be tested by CARB and for preparatory measures and maintenance prior to vehicle testing. If the average emissions for any pollutant from the test vehicles exceed emission standards, the manufacturer will be given 45 days to submit a voluntary remedial plan. If a remedial plan is not submitted, a recall or other corrective action may be ordered by CARB.

The recall procedures are modeled after the Federal recall regulations found in 40 C.F.R. Part 85, Subpart S. The California recall procedures provide that a manufacturer shall submit a remedial plan 45 days after it is notified that the CARB Executive Officer has found that a substantial number of a class of vehicles, although properly maintained and used, contain an emission defect or, alternatively, that the class, on the average, does not conform to California emission standards. Like the Federal regulations, the California recall procedures provide for a hearing should the

manufacturer disagree with the finding. Finally, the recall procedures describe the contents of a remedial plan which the manufacturer must submit to CARB. The most notable difference between California and Federal remedial plan requirements is the provision in the California procedures for incentives to be offered to recall vehicle owners. These incentives may be added to a manufacturer's remedial plan so that the manufacturer may demonstrate that it has made a good faith effort to correct the required percentage of vehicles subject to recall.

These in-use enforcement test procedures and recall procedures were designed to ensure that California's already waived standards are met in-use. Thus, these procedures do not undermine California's protectiveness in the aggregate determination, and do not raise any new technological feasibility or other issues. Therefore, it is included within the scope of previous waivers of Federal preemption granted to California.

III. Finding and Decision

Based on the above discussion, I find the California regulations addressed in this notice are within the scope of previous waivers granted for California standards.

Dated: OCT 23 1984


William D. Ruckelshaus
Administrator